

REMARKS

Claims 1-3 and 5-19 are all the claims pending in the application.

Claim Rejection under 35 U.S.C. § 103

Claims 1-3, 5, 7, 8, 10-15, 17 and 18

Claims 1-3, 5, 7, 8, 10-15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemilainen et al. (U.S. Pat. No. 6,681,259 [hereafter “Lemilainen”]) in view of Knauerhase (U.S. Pat. No. 6,215,774).

To establish a *prima facie* case of obviousness, three basic criteria must be met, including the requirement that the prior art teach or suggest all of the claimed features (See MPEP §2141.) Applicant takes this opportunity to respectively explain why the combination of Lemilainen and Knauerhase do not teach or suggest the features of independent claims 1, 11 and 12.

For example, claim 1 recites, *inter alia*, selecting means for selecting one having a higher communication speed of said plurality of radio transmitting/receiving devices when said first determining means determines that the data signal is to be transmitted as a periodically transmitted data signal. Claim 11, recites, *inter alia*, selecting one having a higher communication speed of a plurality of radio transmitting/receiving devices which are different at least in data communication speed from one another when it is determined that the data signal is to be transmitted as a periodically transmitted data signal. Claim 12, recites, *inter alia*, a third circuit which selects one having a higher communication speed of said plurality of radio transmitting/receiving devices when said second circuit determines that the data signal is to be transmitted as a periodically transmitted data signal.

The Examiner acknowledges that Lemilainen does not teach to select a higher speed when said data signal is a periodically transmitted data signal. (See Office Action, page 4, line 1.) The grounds of rejection therefore cite Knauerhase for this feature.

Applicant has studied the applied art and notes that the portion (i.e., column 8, lines 30-33) of Knauerhase applied by the Examiner discloses “selecting a communications link having a fastest effective link speed for the data communication from the first device to the second device.” Further, the additional portion of Knauerhase cited in the Office Action (i.e., column 4, lines 17-20) discloses “the purpose is to control a transmission of realtime data, such as live-action video, it is generally desirable to analyze both latency and effective usable bandwidth.”

First, Applicant respectfully submits that Knauerhase does not teach or suggest that the realtime data, such as live-action video, is a periodically transmitted data signal, such that a *prime facie* case of obviousness has not been established.

Second, Knauerhase discloses selecting a communication link having an effective link speed for communications between two network devices, so that data is communicated. However, a skilled artisan will appreciate that such a communication link is not based on using radio transmitting/receiving devices. In Knauerhase, there is no radio transmitting/receiving device having an effective link speed that is selected.

In particular, as shown in Fig. 1 of Knauerhase, there is no other network other than the network 6 between the client 2 and the server 4. Knauerhase selects a communication line for communicating between the client 2 and the server 4 in the network 6. However, a transmitting/receiving device, such as a modem for example in each of the client 2 and the server 4 is not selected. Knauerhase does not disclose selecting a radio transmitting/receiving device

having a higher communication speed from a plurality of radio transmitting/receiving devices. Therefore, even if there were, *arguendo*, motivation to combine the devices (which Applicant does not concede to), each of the claimed features would not be taught or suggested. Further, the combination of Lemilainen and Knauerhase does not teach or suggest a configuration corresponding to the first and second determining means of amended claim 1, nor the combination of features as a whole in amended claims 11 and 12, such that the rejection thereof under 35 U.S.C. § 103(a) should be withdrawn. The rejection of claims 2, 3, 5, 7, 8, 10, 13-15, 17 and 18 should also be withdrawn at least due to their respective dependencies on claims 1, 11 and 12.

Claims 6, 9 and 16

Claims 6, 9, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemilainen in views of Knauerhase and Willins et al. (US Publication Number 2003/0021250 [hereinafter “Willins”]).

The grounds of the rejection acknowledge that Lemilainen and Knauerhase do not teach or suggest the features of claims 6, 9, 16 and 19 and therefore relies on Willins. Applicant respectfully submits that Willins fails to make up for the deficient teachings of Lemilainen and Knauerhase in regard to claims 1, 11 and 12, such that claims 6, 9 and 16 are patentable over the applied art at least due to their respective dependencies on claims 1, 11 and 12.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

U.S. Application No.: 09/961,282
AMENDMENT UNDER 37 C.F.R. § 1.111

Q66381

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

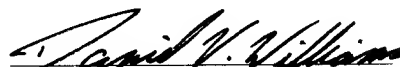
Respectfully submitted,

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER



Daniel V. Williams

Registration No. 45,221

Date: July 17, 2006